

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO,

Petitioner,

v.

Civ. Act. No. 06-58-KAJ

THOMAS L. CARROLL,

Warden, and **CARL C. DANBERG,**

Attorney General for the State of Delaware,

Respondents.

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Thomas J. Capano, has applied for federal habeas relief, challenging his 1999 conviction by a Delaware Superior Court jury for first degree murder. D.I. 1. By the terms of the Court's order, the answer is due to be filed on April 17, 2006.

2. Counsel for respondents have been, and continue to be, diligently working on numerous cases before this Court, the Third Circuit, and the state courts, including other first degree murder cases. However, both counsel have been out of the office recently for medical reasons, and the Appeals Division secretary who had been out on medical leave since mid-December only just returned to the office last week. Moreover, the departure of two deputies from the Appeals Division has increased the workload for the few remaining attorneys. In light of the situation, additional time is needed to complete the answer.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of

time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Counsel for the petitioner, Joseph M. Bernstein, Esquire, has no objection to this request.

6. Respondents submit that an extension of time to and including June 5, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Loren C. Meyers
Chief of Appeals Division
Del. Bar. ID No. 2210

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Del. Bar. ID No. 3759

Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

DATE: April 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2006, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF which will send notification of such filing to Joseph M. Bernstein, Esq.

/s/ Elizabeth R. McFarlan
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ORDER

This ____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before June 5, 2006.

United States District Judge